2000

State of Utah v. Lance Michael Weeks : Reply Brief

Utah Supreme Court

IN THE SUPREME [redacted]RT OF THE STATE OF UTAH

STATE OF UTAH, Plaintiff/Respondent, v. LANCE MICHAEL WEEKS, Defendant/Petitioner.	Case No. 20001049-SC Priority No. 13

REPLY BRIEF OF P[redacted]TIONER ON CERTIORARI REVIEW

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
	:	
Plaintiff/Respondent,	:	
	:	
v.	:	
	:	
LANCE MICHAEL WEEKS,	:	Case No. 20001049-SC
	:	
Defendant/Petitioner.	:	Priority No. 13

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

Page

Page

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

Page

OTHER AUTHORITIES

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
	:	
Plaintiff/Respondent,	:	
	:	
v.	:	
	:	
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POINT I. WEEKS' REQUEST FOR APPELLATE REVIEW ON THE MERITS IS SUPPORTED BY THE RESUSCITATION RULE.[1]

In response to Weeks' arguments before this Court, the state asserts the following: "The general rule in criminal cases is that a defendant waives all claims which he does not

[1] In the opening Brief of Petitioner, Weeks argued at Point I that assuming arguendo he failed to timely object to the restitution order in the trial court, that court entertained his objections and arguments and ruled on the merits of the matter. Thus, Weeks' arguments on appeal were properly preserved, and the court of appeals erred in failing to address them on the merits. See Brief of Petitioner on Certiorari Review, Argument, Point I. Resolution of that issue is pivotal to Weeks' case. The state has responded to that argument at Point II of its brief. See State's Brief of Respondent ("State's Brief").

Thereafter, Weeks argued at Point II of the opening brief that Utah Code Ann. § 76-3-201(4)(e) (Supp. 1998 & 1999) should be interpreted to comport with policy considerations and due process. See Brief of Petitioner on Certiorari Review. The state has responded to that argument at Point I of its Brief. See State's Brief.

While Weeks' Point II is important, this Court may resolve the pivotal issue in this case by reaching the merits of Weeks' arguments as set forth in Point I. Thus, in this Reply Brief of Petitioner, Weeks has prioritized the issues as he did in the opening Brief of Petitioner: Point I herein corresponds with Point I in Weeks' opening Brief (Point II in the State's Brief), while Point II herein corresponds with Point II in Weeks' opening Brief (Point I in the State's Brief).

timely raise." (State's Brief at 15.) Weeks does not take issue with that general statement.

The state also asserts that if a defendant fails to make a timely objection and a timely request in the trial court, the trial court is not obligated to reach the merits of defendant's objection. (See State's Brief at 21.) Under certain circumstances, that may be correct. See Estate of Covington v. Josephson, 888 P.2d 675, 678 n.5 (Utah Ct. App. 1994), cert. denied 910 P.2d 425 (Utah 1995) (trial court "simply denied" untimely motion rather than addressing the merits).

While Weeks does not take issue in this Point I with the state's general arguments and assertions identified above, Weeks maintains that those arguments are irrelevant. In this case, Weeks objected to restitution and requested a hearing. The trial court granted Weeks' request by order dated September 30, 1999, and scheduled the hearing for October 18 (Case Nos. 2830:37-39; 3049:41-43; 3239:39-41). Thereafter, during the hearing, the judge entertained defense counsel's arguments, reviewed the record and statements in the presentence report, and issued a ruling that restitution was "fair and reasonable." (R. 60:3-7.) Thus, this case is governed by the resuscitation rule.

According to the law in this jurisdiction, if a trial court entertains an untimely request or objection and rules on the substance of the objection, the matter is deemed to be properly preserved. The trial court's consideration of the issue on the merits resuscitates the issue under the preservation doctrine for purposes of appeal. (Weeks' Brief of Petitioner on Certiorari Review, Point I); State v. Johnson, 821 P.2d 1150, 1161 (Utah 1991) (if the trial court has taken the opportunity to address even an untimely claim of error, the justification

for a rigid waiver requirement is weakened considerably); State v. Seale, 853 P.2d 862, 870 (Utah 1993) (concluding that when an issue is raised in an untimely motion and the court addresses the issue on the merits, defendant's right to assert the issue on appeal is resuscitated), cert. denied, 510 U.S. 865 (1993); State v. Belgard, 830 P.2d 264, 266 (Utah 1992) (holding that when a judge considers an untimely claim, defendant's waiver is effectively waived by the judge); State v. Matsamas, 808 P.2d 1048, 1053 (Utah 1991) (same); State v. Parker, 872 P.2d 1041, 1044 (Utah Ct. App. 1994) (holding that "trial court acted on the merits of the motion and thus de facto considered it timely"), cert. denied, 883 P.2d 1359 (Utah 1994).[2]

The state claims the resuscitation rule does not apply here. According to the state, even if the trial court granted a late request for a restitution hearing, entertained counsel's objections and arguments at the hearing, then ruled that restitution was fair and reasonable, that did not constitute a ruling "on the merits" for purposes of the resuscitation rule "[b]ecause the trial court did not take evidence" on the matter. (State's Brief at 23-24.) The state's argument is misplaced. Indeed, it was not necessary for the trial court here to "take evidence" in order for its ruling to constitute a determination on the merits under the resuscitation rule. It is sufficient that the trial court ruled on the substance of Weeks' claims, rather than finding waiver. Utah case law supports such a determination.

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[2] Weeks has argued that in the context of this case, the justification for a rigid waiver doctrine serves no legitimate purpose. (See Weeks' Brief of Petitioner on Certiorari Review, at 20-23.)

In State v. Beason, 2000 UT App 109, ¶15, 2 P.3d 459, the court of appeals ruled the issues were properly preserved under the resuscitation doctrine, where the defendant's untimely motion was argued to and denied by the trial court. Id.

In State v. Matsamas, 808 P.2d at 1053, this Court ruled that the untimely evidentiary objections were properly preserved where the trial judge simply considered the substance of the objections and ruled on them. Id.

In State v. Parker, 872 P.2d at 1043-44, the court of appeals determined that a trial court's ruling on the substance of defendant's untimely motion constituted action "on the merits of the motion" and thus a "de facto" determination that the motion was timely. Id.; see also Seale, 853 P.2d at 870 ("Because the court considered the alleged error rather than finding it waived, Seale's right to assert the issue on appeal was resuscitated.").

In this case, Weeks requested a hearing on restitution 11 days after sentencing. The trial judge granted that request and scheduled the matter for October 18, 1999. At the hearing, Weeks specifically asked the trial court for the opportunity to review documentation supporting the restitution amount. (R. 60:5-7 (counsel requested opportunity to review factual and evidentiary basis for restitution amounts).) Weeks also objected to the trial court's reliance on double hearsay statements as the basis for the restitution award. (R. 60:5, 6, 7 (counsel argued that statements in the presentence report were insufficient to support award)); see State v. Johnson, 856 P.2d 1064, 1071 (Utah 1993) (cites omitted) (double hearsay statements in report may not serve as a sole basis for imposing sentence); State v. Howell, 707 P.2d 115, 118 (Utah 1985) (constitution requires judge to act on reliable,

relevant information in sentencing); see also State v. Lipsky, 608 P.2d 1241, 1248-49 (Utah 1980); State v. Casarez, 656 P.2d 1005, 1007 (Utah 1982).

In connection with Weeks' arguments and objections, the trial court engaged in discussion with counsel on the merits, "entertained" argument, invited further comment (R. 60), then ruled that restitution was fair and reasonable based on a review of the presentence investigation report, the "arguments of counsel," the circumstances, and the state's burden of proof. (R. 60:7.)

While the trial court's ruling in this matter lacked fundamental fairness and an adequate evidentiary basis, it nevertheless constituted a decision on the merits. The ruling was sufficient to support application of the resuscitation rule.

In support of the state's argument that the trial court in this case failed to reach a decision on the merits, the state has cited to Covington, 888 P.2d at 678-79 & n.6. (State's Brief at 24.) That case is distinguishable. As set forth in Weeks' opening Brief of Petitioner on Certiorari Review, the defendant in Covington filed a post-summary-judgment motion to alter or amend that the trial court "simply denied" without any hearing or argument. Covington, 888 P.2d at 678 n.5. Covington is not applicable here. In Weeks' case, Judge Frederick held a hearing on the restitution issues and ruled on the substance of Weeks' claims. (See Weeks' Brief of Petitioner on Certiorari Review, at 19-22); Beason, 2000 UT App 109, ¶14 (recognizing that under Covington, party's post-summary judgment motion was not preserved for appeal where trial court simply denied motion without further proceedings).

Inasmuch as the trial court addressed Weeks' arguments on the merits, the court of appeals erred in finding waiver. State v. Weeks, 2000 UT 273, ¶¶10-12, 12 P.3d 110. Weeks respectfully requests that this Court vacate the court of appeals' ruling and remand the case to the trial court for a full hearing on restitution. (Weeks' Brief of Petitioner on Certiorari Review, Point I.)

POINT II. THE STATE'S ARGUMENT REGARDING THE INTERPRETATION OF § 76-3-201(4)(e) IS NOT SUPPORTED BY THE LAW.

A. THE COURT OF APPEALS' INTERPRETATION OF § 76-3-201(4)(e) IS NOT CONSISTENT WITH THE POLICY CONSIDERATIONS UNDERLYING THAT PROVISION.

Point II on certiorari review concerns interpretation of Utah Code Ann. § 76-3-201(4)(e) (Supp. 1998 & 1999). According to that provision, if defendant objects to restitution, "the court shall at the time of sentencing allow the defendant a full hearing on the issue." Utah Code Ann. § 76-3-201(4)(e).

In the underlying opinion to this case, the court of appeals interpreted that provision to require a defendant either to make a request for a full restitution hearing "at or before sentencing," or to waive his rights to the hearing and to due process in the matter. Weeks, 2000 UT App 273, ¶¶9-10.

The plain language of the statute does not support the court of appeals' rigid interpretation.

Indeed, the plain language of the provision serves to accommodate a defendant's due process rights. Utah Code Ann. § 76-3-201(4)(e) (trial court "shall" allow "full hearing" on

restitution issues); see State v. Starnes, 841 P.2d 712, 715-16 (Utah Ct. App. 1992) (identifying defendant's right to examine and present evidence at an evidentiary hearing on restitution under § 76-3-201(4)(e)); Weeks, 2000 UT App 273, ¶8 (recognizing due process rights in sentencing); see also State v. Gomez, 887 P.2d 853, 855 (Utah 1994) ("[f]undamental principles of procedural fairness in sentencing require that a defendant have the right to examine and challenge the accuracy and reliability of the factual information upon which his sentence is based"); Howell, 707 P.2d at 118 (sentencing judge must act on reliable, relevant information in sentencing); State v. Patience, 944 P.2d 381, 389 (Utah Ct. App. 1997); Utah Const. art. I, § 7; U.S. Const. amend. XIV, § 1; (Weeks' Brief of Petitioner on Certiorari Review, Point I.A.).

Since § 76-3-201(4)(e) arguably lends itself to more than one alternative interpretation (the court of appeals' interpretation relates to rigid time constraints on a defendant who objects to restitution, while an alternative interpretation ensures the trial court's obligation to provide a full hearing with due process protections), this Court should interpret the provision in accordance with the policy considerations underlying the provision. See State v. Ostler, 2001 UT 68, ¶¶7-8, 427 Utah Adv. Rep. 35. To that end, as set forth in the opening Brief of Petitioner and below, § 76-3-201(4)(e) should be interpreted to support due process.

B. WEEKS' PROPOSED INTERPRETATION OF THE STATUTE IS CONSISTENT WITH POLICY CONSIDERATIONS, PRACTICES IN THIS JURISDICTION, DUE PROCESS, AND CASE LAW.

As set forth in the opening Brief of Petitioner, Weeks is urging this Court to construe

§ 76-3-201(4)(e) in accordance with the policy considerations underlying the provision. See Ostler, 2001 UT 68, ¶¶7-8 (where statute could reasonably be interpreted in one of two ways, court will consider relevant policy considerations and legislative history for interpretation).[3] Specifically, Weeks has asked this Court to construe § 76-3-201(4)(e) as directory and not mandatory in terms of time restrictions, and to allow defendant a "reasonable time" after sentencing to request a restitution hearing. (Weeks' Brief of Petitioner on Certiorari Review, Point II.)

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[3] With respect to the "legislative history," in 1979 the legislature first enacted the restitution provisions at issue in Weeks' case. See Utah Code Ann. § 76-3-201 (Supp. 1979), Compiler's Notes. (A copy of the provision enacted in 1979 is attached hereto as Addendum A.) The subpart at issue herein was discussed in the January 25, 1979 legislative session, wherein the sponsoring legislator stated the following: "We're preserving some due process rights where if the criminal objects to the imposition [of restitution], he may have a full hearing, and with the benefit of counsel, state those objections and make a determination there." Utah H.B. 6 (January 25, 1979) (Statements of Representative Selleneit). Significantly, in enacting the provision, the legislature did not indicate an intent to impose rigid time constraints on "the criminal." (For this Court's convenience, a transcript of the legislative discussion relating to the provision is attached hereto as Addendum B.)

In connection with the 1979 amendments, Representative Selleneit also made reference to an Oregon statute. "[This bill] is based on an Oregon statute . . ." See Addendum B at 1. The current Oregon statute on restitution is distinguishable from the Utah statute. The Oregon statute provides that if defendant's crime resulted in pecuniary damages, defendant is entitled to "evidence" supporting the nature and amount of the damages. The "evidence" "shall" be based on an investigation by the district attorney and either contained in the presentence report or presented by the district attorney "prior to or at the time of sentencing." Or. Rev. Stat. § 137.106(1); see also id. § 137.106(4) (if defendant objects, he may be heard on the matter).

The Utah statute does not require the prosecution to investigate and present "evidence" supporting restitution prior to sentencing. Rather, restitution awards in Utah are based on "recommendations." Thereafter, if defendant objects to the restitution amount after it is "imposed," he is entitled to due process and a full evidentiary hearing on the matter at a later date. Utah Code Ann. § 76-3-201(4)(e); see infra, discussion herein at text, page 10.

The "reasonable time" interpretation is appropriate for many reasons: First, it satisfies due process and avoids constitutional problems. Utah Code Ann. § 76-3-201(4)(e) (in connection with objections on restitution, trial court "shall" allow defendant a "full hearing" on the matter); Utah H.B. 6 (January 25, 1979) (Statements of Representative Selleneit) (due process is preserved with "full hearing" provision); Starnes, 841 P.2d at 715-16 (interpreting § 76-3-201(4)(e) to ensure due process in restitution hearings); Ostler, 2001 UT 68, ¶¶7-8 (if statute is capable of more than one interpretation, court will look to policy considerations underlying provision); see also State v. Lopes, 1999 UT 24, ¶6, 980 P.2d 191 (court construes statute in favor of constitutionality); In the Interest of Clatterbuck, 700 P.2d 1076, 1079 (Utah 1985) (court interprets statute to avoid due process concerns); Casarez, 656 P.2d at 1008 (to avoid due process conflicts, Court interprets sentencing statute to require trial court to disclose presentence investigation report to defendant prior to sentencing).

That is, the interpretation set forth in Weeks' Brief of Petitioner accommodates reasonableness and fundamental fairness, where a "reasonable time" component would provide defendant with an opportunity to investigate the need for a restitution hearing after proper notice of the matter at sentencing. (Weeks' Brief of Petitioner on Certiorari Review, Point II (strict adherence to § 76-3-201(4)(e) fails to accommodate investigation into the issues and into the need for a hearing on the matter)); Monson v. Carver, 928 P.2d 1017, 1028 n.9 (Utah 1996) (restitution hearing may be held after appropriate notice to defendant and after defendant has had access to materials); Nelson v. Jacobsen, 669 P.2d 1207, 1211 (Utah 1983) (to be proper and adequate, notice must provide party with the opportunity "to

be heard in a meaningful way"); see also State v. Dominguez, 1999 UT App 343, ¶¶3-5, 992 P.2d 995, (sentencing hearing was held in April 1998, objection filed in May 1998, restitution hearing held in September 1998); Ostler, 2001 UT 68, ¶10 (construing rule to provide defendant with 30 days after sentencing to seek withdrawal of a plea in order to accommodate proper investigation into the matter and to avoid constitutional problems).

Second, the "reasonable time" interpretation would be consistent with current practices in the trial courts. As set forth in the opening Brief of Petitioner, a defendant is first notified of "recommended" restitution amounts three days before sentencing. (Weeks' Brief of Petitioner on Certiorari Review, at 24-25 (citing Utah Code Ann. § 77-18-1(5)(b)(ii), (6)(a) (1999)).) Thereafter, at sentencing, defendant is notified for the first time of the specific amount the trial judge intends to impose. Utah Code Ann. § 76-3-201(4). At that point in the proceedings defendant has not been given sufficient opportunity to prepare for a full hearing on the matter or to gather or examine evidence relating to restitution. (Weeks' Brief of Petitioner on Certiorari Review, Point II.)

If defendant objects to the imposition of restitution, it is the practice in the trial courts to schedule a hearing on the matter for months after sentencing, apparently to accommodate crowded calendars, the attendance of third party witnesses, and further investigation. (See State's Brief at 12-13 ("as a matter of course" trial courts schedule restitution hearings for later dates)); see also Dominguez, 1999 UT App 343, ¶¶3-5 (sentencing hearing was held in April 1998, objection filed in May 1998, restitution hearing held in September 1998); but see Utah Code Ann. § 76-3-201(4)(e) (trial court "shall" hold "full hearing" "at the time of

sentencing"). Thus, the "reasonable time" component would comport with the routine practices of the trial court.

Third, Weeks' proposed interpretation is consistent with this Court's interpretation of other sentencing provisions. State v. Helm, 563 P.2d 794, 797 (Utah 1977) (construing the mandatory time restrictions set forth in Section 77-35-1 to provide the sentencing court with a "reasonable time" in which to complete sentencing); State v. Tyree, 2000 UT App 350, ¶15, 17 P.3d 587 (same), cert. denied, 26 P.3d 235 (Utah 2001); Ostler, 2001 UT 68 (interpreting the language of rule 11 to provide defendant with 30 days from sentencing in which to withdraw plea); (Weeks' Brief of Petitioner on Certiorari Review, Point II).

Finally, Weeks' proposed interpretation would bring Section 76-3-201(4)(e) in harmony with Rule 22(e), Utah Rules of Criminal Procedure. See Lyon v. Burton, 2000 UT 19, ¶17, 5 P.3d 616 (statute will be construed so that it is in harmony with other provisions).

Rule 22(e) provides that a court may correct a sentence "imposed in an illegal manner, at any time." Utah R. Crim. P. 22(e) (2001); State v. Brooks, 908 P.2d 856, 859 (Utah 1995) (holding that Rule 22(e) permits an appellate court to consider the legality of a sentence even if the issue is raised for the first time on appeal.)

Since restitution is ordered as part of sentencing (Lipsky, 608 P.2d at 1244), Rule 22(e) would apply to those restitution amounts "imposed in an illegal manner."

By way of illustration, Weeks' objections to restitution in the trial court related to the way in which the award was imposed at sentencing. According to Utah case law, "[f]undamental principles of procedural fairness in sentencing require that a defendant have

the right to examine and challenge the accuracy and reliability of the factual information upon which his sentence is based." Gomez, 887 P.2d at 855. In addition, double hearsay statements may not serve as the basis for a sentencing determination. Johnson, 856 P.2d at 1071; see also Howell, 707 P.2d at 118 (constitution requires judge to act on reliable, relevant information in sentencing).

In this case, Weeks objected to the trial court's reliance on statements in the presentence report to support the restitution award (R. 60:5-7 (judge identified statements in presentence report as supporting the order, and defendant objected to reliance on such statements)), and he requested the opportunity to examine and challenge the accuracy and reliability of the factual information upon which the restitution order was based. (R. 60.) The trial court denied Weeks' objections and requests. The trial court erred under both Rule 22(e) and § 76-3-201(4)(e).

Because the restitution sentence was imposed in an illegal manner in violation of Gomez, 887 P.2d at 855 (defendant has right to examine and challenge accuracy of factual information); Howell, 707 P.2d at 118 (judge must act on reliable information); and Johnson, 856 P.2d at 1071 (double hearsay may not serve as sole basis for sentencing),Weeks was entitled to relief under both Section 76-3-201(4)(e) and Rule 22(e).[4] Since Weeks could have

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[4] Although Weeks filed his request in the trial court under § 76-3-201(4)(e), this Court may address Weeks' arguments on appeal as though he filed them under Rule 22(e). See Brooks, 908 P.2d at 859 (appellate court may consider legality of sentence under Rule 22(e) even if issue is raised first on appeal); see also Bair v. Axiom Design, 2001 UT 20, ¶¶9-10, 20 P.3d 388 (if the trial court has addressed the merits of an improperly labeled motion, this Court will disregard labeling to resolve the matter as though defendant proceeded under the

made his request for relief under Rule 22(e) "at any time," it is only reasonable to interpret § 76-3-201(4)(e) in harmony with that provision. In that regard, Weeks' proposed interpretation of § 76-3-201(4)(e) is appropriate. It would allow defendant a "reasonable time" to object to restitution in order that the trial court may provide a "full hearing" on the matter in connection with sentencing.

Weeks' proposed interpretation of § 76-3-201(4)(e) would bring that provision in harmony with similar provisions, with practices in the trial court, and with due process, and it would be consistent with the plain language, which entitles defendant to a full hearing on the matter in connection with sentencing.

C. THE STATE'S ARGUMENTS IN OPPOSITION TO WEEKS' PROPOSED INTERPRETATION ARE NOT SUPPORTED BY THE LAW.

In response to Weeks' arguments concerning interpretation of the statute, the state claims that a "reasonable time" for objections after sentencing would "interject unwarranted uncertainty and delay into the criminal process." (State's Brief at 16.) The state's claims are misplaced for the following reasons.

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proper rule of procedure); see also Watkiss & Campbell v. FOA & Son, 808 P.2d 1061, 1064-65 (Utah 1991) (stating that an incorrect title placed upon a pleading is not a bar to a party's case on appeal); Parker, 872 P.2d at 1044 (although defendant was not entitled to have a motion to alter or amend considered by the trial court, court of appeals would consider substance of motion as though it had been filed pursuant to Rule 22(e) or 60(b)).

In this matter, whether Weeks filed the motion under Rule 22(e) or Section 76-3-201(4)(e), he was entitled to due process in the proceedings, and accuracy and reliability at sentencing. Indeed, Weeks specifically asked the court of appeals to rely on Rule 22(e) to reach the merits of his claims on appeal. (See Reply Brief of Appellant, dated July 11, 2000, at 12-13; see also Weeks' Brief of Petitioner on Certiorari Review, at 21, 28-29.) The court of appeals refused to do so. That was error. Weeks is entitled to relief under that provision.

First, this Court may specify that a "reasonable time" must be within 30 days of sentencing, to provide defendant with adequate notice of the matter and an opportunity to investigate the need for a full hearing on restitution. See Ostler, 2001 UT 68, ¶10 (Court interprets rule to allow defendant to seek withdrawal of a guilty plea within 30 days after judgment, since investigation after the plea may produce information affecting the validity of that plea); see also Weeks, 2000 UT App 273, ¶22 (Billings, J., dissenting); Clatterbuck, 700 P.2d at 1079 (although statute failed to specify standard of proof for proceedings, this Court interposed standard resolving due process concerns); Casarez, 656 P.2d at 1008 (to avoid due process conflicts, Court interprets sentencing statute to require trial court to disclose presentence investigation report to defendant prior to sentencing).

Second, a "reasonable time" standard would not impose delay or uncertainty. (See State's Brief at 12-13 (recognizing that trial courts routinely postpone or delay hearings on restitution under current practices).) Rather, it would facilitate timeliness and resolution, where defendants would be given an opportunity within a reasonable, specified time after the imposition of restitution to assess whether an objection or hearing would be necessary. The assessment may place the validity of the restitution award in question -- making a hearing necessary -- or the assessment may justify the award making a hearing unwarranted. So long as defendant has made his objection to the restitution award within a reasonable time and the trial court has held a hearing in a timely manner, the issues would be resolved without delay,

uncertainty or continued postponement.[5]

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[5]The state claims that if defendant were allowed to object to restitution within a reasonable time of sentencing, it is unclear how the hearing on restitution "would impact the appellate process." (State's Brief at 17-18.) The state's claim is incorrect.

Once the trial court has conducted the restitution hearing and issued an order on the matter, defendant may appeal from that order since all matters relating to the criminal case are finally resolved. In Starnes, 841 P.2d 712, after defendant entered a guilty plea for criminal mischief and assault, a judgment was entered against him ordering him to pay restitution. Defendant subsequently requested a restitution hearing, and after three hearings, which were held between November 8, 1991, and January 8, 1992, defendant appealed. The court of appeals reviewed the issues on appeal and vacated the restitution order for further proceedings. In State v. Dominguez, 1999 UT App 343, ¶¶3-5, 992 P.2d 995, sentence and judgment were entered in April 1998, defendant filed an objection to restitution on or about May 14, 1998, a restitution hearing was conducted in September 1998, and defendant appealed from that final order. In that case, resolution of the restitution issues signaled finality in the case. See also State v. Robinson, 860 P.2d 979, 980 (Utah Ct. App. 1993) (appealing from restitution order), cert. denied, 878 P.2d 1154 (Utah 1994).

Restitution issues may be compared to attorneys' fees issues in civil cases. In ProMax Dev. Corp. v. Raile, 2000 UT 4, 998 P.2d 254, plaintiff filed suit against defendants alleging mechanic's lien foreclosure, breach of contract, and unjust enrichment. After a trial to the bench, the court dismissed the complaint and entered judgment against plaintiff, dated October 1, 1997. Id. at ¶8. On December 1, 1997, the trial court conducted a separate hearing on the award of attorneys' fees and on February 9, 1998, the court amended the fees order. Id. at ¶9. On February 13, 1998, plaintiff filed a notice of appeal claiming error in the trial that resulted in the October 1, 1997 judgment. Id. Defendants moved to dismiss the appeal as untimely. Id. at ¶10. This Court denied that motion. Id. at ¶11.

> [I]n the interest of judicial economy, a trial court must determine the amount of attorney fees awardable to a party before the judgment becomes final for the purposes of an appeal under Utah Rule of Appellate Procedure 3. This holding will serve both litigants and this court well, by "enabl[ing] an appellant to appeal all issues, including an award of attorney fees, in a single notice of appeal."

Id. at ¶15; see also Sittner v. Schriever, 2000 UT 45, ¶¶18-23 , 2 P.3d 442 (judgment was not appealable until issues regarding attorneys' fees were finally resolved); State v. Depaoli, 835 P.2d 162, 163-64 (Utah 1992) (considering Oregon law in interpreting Utah's restitution statute); State v. Bonner, 771 P.2d 272, 273 (Ore. 1989) (since restitution is part of the sentence, an order is not final for appeal until restitution issues are resolved); Utah Code Ann. 76-3-201(4)(a)(i) (Supp. 1998 & 1999) (restitution order is part of sentencing). Once the restitution issues are finally resolved, a notice of appeal may be filed in the matter.

Next, the state claims that Weeks' interpretation of the provision is not supported by case law, while the court of appeals' interpretation is "consistent" with "inferences" from other cases. (State's Brief at 11.) In support of that claim, the state cites to Monson v. Carver, 928 P.2d 1017; State v. Snyder, 747 P.2d 417, 421 (Utah 1987); and State v. Haga, 954 P.2d 1284, 1289 (Utah Ct. App. 1998). Those cases do not support the interpretation of § 76-3-201(4)(e) articulated by the court of appeals or the state in this matter.

In Monson v. Carver, the Board of Pardons held a hearing in November 1992 concerning Monson's parole, after which it issued an order granting a parole date and requiring Monson to pay restitution in an amount to be determined. Monson, 928 P.2d at 1020-21. Monson did not object to the order and he did not request any further hearing before the Board on the matter. Id. at 1029. Approximately one year later, in November 1993, Monson filed an amended petition for extraordinary relief with a trial court, wherein he alleged error in the Board's restitution order. Id. at 1021, 1029. Monson claimed (1) the Board failed to consider mandatory statutory factors in ordering restitution, and (2) it denied him a "full hearing" on restitution as required by § 76-3-201(4)(e). See id. at 1028-29.

This Court agreed with Monson on the first claim and remanded the case with orders to the Board to explain its restitution order in light of mandatory statutory factors. In connection with the remand proceedings, this Court anticipated that the Board would "no doubt determine the [specific] amount of restitution to be ordered" in the case. Id.

With respect to Monson's second claim, this Court ruled there was no error in the Board's failure to provide a "full hearing" since Monson did not request a hearing and he did

not make an objection to the Board with regard to restitution. Indeed, Monson failed to give the Board any opportunity to consider his objections to restitution. Thus, Monson's issues were not properly before the appellate court. See id. at 1029. That did not end the matter.

Thereafter, notwithstanding Monson's waiver of the full hearing, this Court further ruled that if the Board specified an amount in restitution during remand proceedings and Monson objected to the amount imposed, he would be entitled to a full hearing on the restitution issues. Id. Its seems in Monson, defendant would be entitled to a full hearing even where he failed to object to restitution in the original proceedings.

In State v. Snyder, 747 P.2d at 421, defendant failed to object to the order of restitution in the trial court. On appeal, he claimed the restitution order was in error. This Court ruled that defendant's failure to present the matter to the trial court in the first instance constituted waiver. Id. That is consistent with basic waiver principles.

Finally, in State v. Haga, 954 P.2d 1284, the court of appeals ruled that defendant who requested a "full hearing" was entitled to such. Id. at 1289. That case did not concern the timing of objections and therefore is not helpful to the analysis in this matter.

In sum, the state's cases do not support the court of appeals' interpretation that § 76-3-201(4)(e) requires defendant either to object to restitution at sentencing or to waive his rights to a full hearing. See Weeks, 2000 UT App 273, ¶¶9-10. Rather, those cases simply support the long-standing rule that the trial court must be given the first opportunity to correct error before the error may be considered on appeal. Weeks has complied with that long-standing rule. (See Weeks' Brief of Petitioner, Point I; see also supra Point I, herein.)

Finally, in the event this Court determines that § 76-3-201(4)(e) requires a defendant to object to restitution "at the time of sentencing," the statute does not automatically close the door to due process and a full hearing if defendant makes an objection to restitution sometime thereafter. Compare Utah Code Ann. § 76-3-201(4)(e) (provision states, trial court "shall" provide defendant with a "full hearing" on restitution at the time of sentencing), with Utah Code Ann. § 77-8a-1(4)(b) (1999) (statute species that a defendant's motion to seek severance of the offenses "is waived" it if is not made "at least five days before trial"); Utah Code Ann. § 77-10a-8(4) (1999) (statute specifies that a party must move to dismiss an indictment for violation of grand jury proceedings within seven days after discovery of the violation or such matter is "waived"). Indeed, the trial court still has discretion to entertain the issues and to rule on the matter.

Thus, to the extent Weeks failed to object to restitution in a timely manner, Weeks' was entitled to a "full hearing" and due process in the matter when the trial court conducted a hearing on his objections, entertained argument, and ruled on the merits. (See Weeks' Brief of Petitioner, Point I; see also supra Point I, herein); Utah R. Crim. P. 22(e).

The court of appeals' ruling is in error. It should be vacated with remand to the trial court for further proceedings on the matter.

POINT III. THE STATE'S ARGUMENT REGARDING THE FINDINGS FAILS TO TAKE INTO CONSIDERATION THE PLAIN LANGUAGE OF THE STATUTE AND UTAH CASE LAW ON THE MATTER.

Section 76-3-201 requires a trial court to consider certain factors before ordering restitution in a case. Specifically, the court is required to consider (1) the financial resources

of the defendant and the burden that payment of restitution will impose, (2) the defendant's ability to pay restitution, (3) the rehabilitative effect of restitution on the defendant, and (4) other circumstances. The court also is required to make a record of its reasons for restitution in light of the statutory framework. See Utah Code Ann. §76-3-201(4), (8) (Supp. 1998 & 1999); Monson, 928 P.2d at 1028 (the Board "must not only consider the four statutory factors when it orders restitution as a condition of parole, but it must also comply with the same procedural requirements imposed on a trial court, e.g., it shall make a record of the reasons for its decision"; on remand, the Board must "comply with the statute by giving Monson an explanation of its decision which demonstrates that it has taken into account the appropriate statutory factors"); see also Miller v. State, 932 P.2d 618, 621 (Utah Ct. App. 1997); see also State v. Haston, 811 P.2d 929, 936-37 (Utah Ct. App. 1991) (the trial court "must declare reasons within the statutory framework for awarding or denying restitution"), rev'd on other grounds, 846 P.2d 1276 (Utah 1993).

In State v. Robertson, 932 P.2d 1219 (Utah 1997), this Court read the relevant statutory provisions set forth above to provide that the trial court must state the reasons for restitution on the record in light of the specific statutory factors. This Court ruled that "before ordering restitution, the court must take into account the financial resources of the defendant." Id. at 1233 (citing Utah Code Ann. § 76-3-201(4)(c)(i)). "If the court determines that restitution is appropriate or inappropriate under this subsection, *the court shall make the reasons for the decision a part of the court record.*" Id. at 1234 (emphasis in original; citing Utah Code Ann. § 76-3-201(4)(d)(i)).

> We read this requirement to mean that after taking into account the factors listed in section 76-3-201(4)(c) [now subsection (8)], the trial court must take the additional step of explicitly noting on the record the reasons for the decision it reached, reflecting the detailed factors listed in the statute. This directive precludes the *Ramirez* assumption.
>
> In the present case, though the court explained its reasons for imposing restitution of State Hospital costs incurred during Robertson's period of malingering, the court did not discuss on the record the reasons for ordering restitution of extradition costs. Because this error occurred at the sentencing stage, where costs were imposed, we vacate the portion of the order imposing extradition costs and remand to the trial court for further proceedings in compliance with section 76-3-201(4)(d)(i).

Robertson, 932 P.2d at 1234.

In Weeks' case, the state acknowledges that to the extent Robertson requires a trial court to "make specific findings concerning the statutory factors that must be considered under section 76-3-201(8)(c), the court of appeals erred in finding no error here." (State's Brief at 25-26.)

The state then suggests that Robertson does not require such findings, and that the above language in Robertson is dicta:

> In arguing that the court of appeals' decision here conflicts with *Robertson*, defendant focuses on a statement that section 76-3-201(4) requires the trial court to "'explicitly not[e] on the record the reasons for the decision it reached, *reflecting the detailed factors in the statute*." Pet. Br. at 33. (emphasis added); *Robertson*, 932 P.2d at 1234. However, the emphasized portion of the Court's statement is dicta. Remand was necessary under section 76-3-201 because the trial court had failed to place its reasons for ordering restitution on the record, as required by section 76-3-201(4)(d)(i). *Id.* The Court's comment on the factors, then, was unessential to its holding.

(State's Brief at 26-27.) The state mischaracterizes the relevant language in Robertson. As the underscored language below supports, the language was not dicta since this Court was interpreting Utah statutory law.

> [S]ection 76-3-201(4)(d)(i) adds, "If the court determines that restitution is appropriate or inappropriate under this subsection, *the court shall make the reasons for the decision a part of the court record.*" Utah Code Ann. § 76-3-201(4)(d)(i) (emphasis added). *We read this requirement to mean that after taking into account the factors listed in section 76-3-201(4)(c), the trial court must take the additional step of explicitly noting on the record the reasons for the decision it reached, reflecting the detailed factors listed in the statute.* This *directive* precludes the use of the *Ramirez* assumption.

Robertson, 932 P.2d at 1234 (underscored emphasis added).

This Court's interpretation of Utah statutory law is binding on the trial court and the court of appeals. See Litman v. Massachusetts Mut. Life Ins., Co., 825 F.2d 1506, 1508 (11th Cir. 1987) (supreme court has power to make determinations with respect to the law of the jurisdiction that is binding on both trial courts and lower appellate courts), cert. denied, 484 U.S. 1006 (1988); Utah Const. art. VIII, §§ 1,2 (judicial power rests with the supreme court, the highest court of the state). Here, the law is plain. As set forth in the opening Brief of Petitioner, in Weeks' case the trial court failed to make findings on the record supporting the reasons for restitution in light of the statutory factors. (See Weeks' Brief of Petitioner on Certiorari Review, Point III.) That was error.

Next, the state argues that the trial court should not be held to entering findings of fact as required under § 76-3-201(4) and (8), Robertson, 932 P.2d at 1234, and Monson, 928 P.2d at 1028, because this Court has not interpreted *Utah Code Ann. § 76-3-401* to require such findings. (State's Brief at 27.) The state's argument is irrelevant. Utah Code Ann. § 76-3-401 is not at issue here.

Finally, the state argues that the court of appeals correctly found that the trial court

"put its reasons for ordering restitution on the record" when it made reference to Weeks' criminal history (State's Brief at 27) and reference to Weeks' presentence investigation report. (State's Brief at 28.) Those references are insufficient to support the restitution order.

As the state seems to acknowledge in its Brief of Respondent, with respect to the trial court's reference to Weeks' criminal acts and history, that reference did not relate to restitution. (See State's Brief of Respondent at 8; State's Brief of Appellee, dated May 12, 2000, at 8 and 18 ("although not specifically addressing its reasons for restitution," the court "noted" defendant's criminal history).) Instead, that reference related to the fact that the judge intended to send Weeks to prison for the crimes. (See Weeks' Brief of Petitioner on Certiorari Review, Point III.B.) In that regard, the court of appeals' ruling is in error: the trial court did not put its reasons for ordering restitution on the record when it made reference to the criminal acts and history.

In addition, as set forth in the opening Brief of Petitioner, the trial court's reference to the presentence investigation report fails to support compliance with the statute. (See Weeks' Brief of Petitioner on Certiorari Review, at 37-41.) Thus, the trial court's ruling is incorrect. On that basis, Weeks respectfully requests that this case be remanded to the trial court for proper consideration of the statutory factors and findings.[6]

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[6] In its brief, the state claims Weeks has "conceded" certain portions of the state's arguments. (*See e.g.*, Brief of Respondent on Certiorari Review, at 10 and 12.) Those claims should be disregarded unless Weeks has specifically and explicitly stated otherwise herein.

CONCLUSION

For the reasons set forth above and as set forth in the opening Brief of Petitioner, Weeks respectfully requests that this Court vacate the court of appeals' ruling in this matter and remand this case to the trial court for a full hearing and proper findings on the restitution issues.

SUBMITTED this 17th day of October, 2001.

LINDA M. JONES
SCOTT WILLIAMS
Attorneys for Defendant

CERTIFICATE OF DELIVERY

I, LINDA M. JONES, hereby certify that I have caused to be hand-delivered 10 copies of the foregoing to the Utah Supreme Court, 450 South State Street, Salt Lake City, Utah 84114, and 4 copies to the Utah Attorney General's Office, Heber M. Wells Building, 160 East 300 South, Sixth Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, this 17th day of October, 2001.

LINDA M. JONES

DELIVERED to the Supreme Court and the Attorney General's office as set forth above, this ___ day of _____, 2001.

_____

ADDENDA

Addendum A

UTAH
CODE ANNOTATED

REPLACEMENT
VOLUME 8B
1979 Pocket Supplement

Containing

Amendments to acts and new laws enacted by the legislature since publication of Replacement Volume 8B

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or whether it is mainly the product of some incitement or inducement by the police; statute made no substantial change in meaning of prior Supreme Court rulings in regard to when entrapment occurs. State v. Hansen, 588 P. 2d 164.

76-2-305. Mental disease or defect.

Lay witness.

Court did not commit error in excluding lay witness testimony of defendant's insanity where defendant did not manifest any obvious symptoms of insanity from which the lay witness could reliably form a judgment. State v. Mellen, 583 P. 2d 46.

CHAPTER 3—PUNISHMENTS

Part 2—Sentencing

76-3-201. Sentences or combination of sentences allowed—Civil penalties—Restitution to victim.—(1), (2) * * * [Same as parent volume.]

(3) (a) When a person is adjudged guilty of criminal activities which have resulted in pecuniary damages, in addition to any other sentence it may impose, the court may order that the defendant make restitution to the victim.

(b) In determining whether to order restitution which is complete, partial or nominal, the court shall take into account:

(i) The financial resources of the defendant and the burden that payment of restitution will impose, with due regard to the other obligations of the defendant;

(ii) The ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court; and

(iii) The rehabilitative effect on the defendant of the payment of restitution and the method of payment.

(c) If the defendant objects to the imposition, amount or distribution of the restitution, the court shall at the time of sentencing allow him a full hearing on such issue.

(4) As used in subsection (3) above:

(a) "Criminal activities" means any offense with respect to which the defendant is convicted or any other criminal conduct admitted by the defendant;

(b) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and shall include, but not be limited to, the money equivalent of property taken, destroyed, broken or otherwise harmed, and losses such as medical expenses;

(c) "Restitution" means full, partial or nominal payment of pecuniary damages to a victim;

(d) "Victim" means any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities; "victim" shall not include any coparticipant in the defendant's criminal activities.

History: C. 1953, 76-3-201, enacted by L. 1973, ch. 196, § 76-3-201; L. 1979, ch. 69, § 1.

Compiler's Notes.

The 1979 amendment added subsecs. (3) and (4) relating to restitution to victim.

76-3-201.1. Nonpayment of fine or restitution as contempt—Imprisonment—Relief where default not contempt—Collection of default. —(1) When a defendant sentenced to pay a fine or to make restitution defaults in the payment thereof or of any installment, the court on motion of the county attorney, victim, or upon its own motion may require him to show cause why his default should not be treated as contempt of court, and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes contempt and may order him committed until the fine or the restitution, or a specified part thereof, is paid.

(3) When a fine or an order of restitution is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the fine or make the restitution from those assets, and his failure to do so may be held to be contempt unless he makes the showing required in subsection (2) of this section.

(4) The term of imprisonment for contempt for nonpayment of fines or failure to make restitution shall be set forth in the commitment order.

(5) If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or order of restitution or the unpaid portion thereof in whole or in part.

A default in the payment of a fine or costs or failure to make restitution or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of a fine or restitution shall not discharge a defendant committed to imprisonment for contempt until the amount of the fine or restitution has actually been collected.

History: C. 1953, 76-3-201.1, enacted by L. 1979, ch. 69, § 2.

Title of Act.

An act amending section 76-3-201, Utah Code Annotated 1953, as enacted

Addendum B

UTAH HOUSE BILL NO. 6 (1979)

In the Utah House of Representatives, January 25, 1979, House Bill No. 6, Third Reading.

[Clerk: Reads Bill]

[Representative Selleniet]: Thank you. This bill is a result of an Interim Study Committee assignment three years ago. It is based on an Oregon statute that has been through the Governor's Blue Ribbon Task Force Committee on Criminal Justice and has their recommendation. Basically what we're doing in the bill is broadening the restitution program and the latitude of the courts as far as restitution goes. And that is restitution by the criminal to his victim. Some of the things that we have in the bill is that the court determine what the financial resources are of the victim [sic: defendant] and his ability to pay and, what I think is most important, the rehabilitative effect on the victim [sic: defendant]. We're preserving some due process rights where if the criminal objects to the imposition, he may have a full hearing, and with the benefit of counsel, state those objections and make a determination there.

We have limited this to special damages, but excluded general damages. This, however, will still allow a victim to go into the civil courts and obtain any other damages. We've also provided in the bill that if a criminal is sentenced as part of his sentence with restitution and is not meeting those requirements, that the county attorney, the victim, or the court upon them, on motion may bring him in on an order to show cause why he shouldn't be held in contempt. We also have contempt provisions here

with guidelines to the court.

Rather than go in greater detail, this is pretty well the heart of the bill. I would solicit your whole-hearted support, and I'll submit to questions if there are any at this time. Thank you.

[Unidentified Speaker]: Anybody like to question Rep. Selleniet on his bill?

[Representative Selleniet]: I will not sum up then. Just call for the question on the bill.

[Unidentified Speaker]: Voting will now be open on House Bill 6, as amended. Voting is now open. Would you quickly vote.

[Bill passes.]

In the Utah Senate, February 7, 1979, House Bill No. 6 Second Reading.

[Unidentified Speaker]: What I'd like to do I guess is ask the secretary of the Senate to read both House Bill 6 and 27 so that they would both be before us, and it would be my intention then to have a committee of the whole, and the chief sponsor of both bills could make a brief explanation of those bills. House Bill No. 6.

[Clerk]: House Bill No. 6, Restitution by Criminals by Rep. Selleniet. [Clerk reads bill.]

[Unidentified Speaker]: We've heard the motion to adopt the committee report. Discussion.

All in favor of motion, say *I*. [*I*] Opposed, *no*. Carried by one vote. Passes. Representative Selleniet, (inaudible) to come to the mic, please.

[Motion to adopt the committee report.]

[Representative Selleniet]: Thank you Mr. President, ladies and gentlemen of the Senate. Very briefly, let me say House Bill 6 is a restitution bill that requires that where possible criminals make restitution to their victims. It's coming through the Interim Judiciary Study and was recommended by them. It's also been reviewed by the Governor's Blue Ribbon Task Force on Criminal Justice and has been recommended by that study group also. House Bill 27, Defense Cost and Criminal Actions, is somewhat related and I'll discuss the two together as has been indicated.

Currently, the courts can order restitution, but there are guidelines lacking and what we're trying to do here is give the court certain guidelines. We're trying to broaden it somewhat. Currently if there's a plea bargaining situation and they're only found guilty of one offense officially, the court cannot assess restitution in those other cases. There is a Supreme Court case in the state of Utah. We're trying to clarify that by statute (inaudible) allowed.

There are three things that the court must consider. There's financial resources, the ability of the criminal to pay, and the rehabilitative effect. Provisions for order to show cause, if they don't meet the restitution requirements. As an example, the court could order that restitution be made on monthly installments, and if they fall behind in

the installments, either the court, the county attorney, or the victim will file an order to show cause. There are contempt provisions in that bill. The Cost and Criminal Actions Bill is followed from an Oregon statute which has been to United States Supreme Court. (Inaudible) this is for. And basically what it does, is in the cases where the court has appointed an attorney for an indigent defendant, and the court finds that that indigent defendant can pay part of that cost back or all of that cost, in other words is not so indigent as they may have indicated, they may assess these costs and allow the county to recoup those costs.

The provisions there once again are that first, restitution must be the primary consideration, that it be limited to the attorney fees and any investigator that the attorney may have hired. Also, he cannot assess for the cost of jury trial because that's a constitutionally-guaranteed provision. He must also take into account the ability to pay, the financial resources, the nature of the burden, and, as I indicated, restitution. There are contempt provisions in that, also. And that basically summarizes the bills. Thank you.

[Unidentified Speaker]: Mr. President, are there any questions of Rep. Selleniet?

[Senator Halverson]: Yes, Representative Selleniet, this comes from the Interim Study I suppose from the bill that we introduced a year ago on restitution for crimes. We have not chosen to go far enough to really restore. Would you give me some rationale as to why you're imposing the hardship. (Inaudible) creates the hardship. But I don't ever see in your bill the real ability to reach a status of restitution. It's merely for process of

forcing some payment by the criminal as his ability would allow.

[Representative Selleniet]: That's correct. The bill does not go as far as I personally would have desired. But it is a compromised situation as it may have been the bill we said the court *"may"* impose. I would like to have made that a *shall*. Many of the members [of] the committee felt that would (inaudible) impose that on the court, but it does broaden considerably. Certainly if you're going to put a criminal on probation, and as a condition of restitution, he is financially unable to make that restitution, completely make that restitution, you wouldn't want to revoke that probation if he could make part of it and he would make a good faith effort. We're trying to give the court some discretion yet say that restitution should be a primary factor in probation particularly.

Also, the parole board has indicated if the courts will impose restitution as well as a jail sentence, when they come up for parole they will continue with that restitution in many cases as part of the parole. It doesn't go as far as many of us would like it to do, but it does go a great deal farther than we're currently doing Senator.

[Unidentified Speaker]: Well, without question you're to be complimented on what you are doing, but the price tag on the bill? Would you care to comment concerning that?

[Representative Selleniet]: Yes. That is rather erroneous. That would be based on (inaudible) expand it considerably. In talking with the Adult Parole and Probation,

we could keep it at the current level without a lot of interplay from them. Direct restitution made to the victim rather than through Adult Parole and Probation and not increase these costs. If we did direct them, and that's not my intent. If we did direct them to act as an intermediary and do the collecting, it would certainly increase the cost. My personal feeling is in those cases where the criminal can directly work with the victim, that it'll have more of a rehabilitative effect, and I would prefer it to see it go in that direction. If we aren't funded, obviously that's how they're going to have to go.

[Unidentified Speaker]: Are there other questions?

I move we resolve it committee as a whole.

All in favor of the motion, say *I*. Opposed, *no*. (Inaudible) carries we are out of the committee of the whole. Unless there are any questions, I now move call for the question on House Bill 6. Questions call for on House Bill 6. Any discussion. (Inaudible) on the question shall be read for the third time.

In the Utah Senate, February 8, 1979, House Bill No. 6, Third Reading.

[Clerk]: House Bill No. 6. Restitution by Criminals by Representative Selleniet.

[Unidentified Speaker]: Is there anyone here to explain the House Bill 6? We're just about fresh out of leaders. (Inaudible) he has the highest authority on the floor, I think.

[Unidentified Speaker]: This was a bill that did not receive any great debate or controversy yesterday. And I think we could proceed to vote on the bill.

[Unidentified Speaker]: The House sponsor of this bill felt that based on the vote yesterday that it should not be controversial and suggested that we just proceed forward.

[Clerk]: Call for House Bill 6 pass. Roll call vote. (Individual voting takes place.)

House Bill 6 on calendar final passing has received 24 *I* votes, no *nay* votes (inaudible) received the majority. The bill passes, and will be signed by the President of this open session, and referred to the House for their further action.